

1 KEKER, VAN NEST & PETERS LLP  
2 DAVID SILBERT (SBN 173128)  
3 dsilbert@kvn.com  
4 MICHAEL S. KWUN (SBN 198945)  
5 mkwun@kvn.com  
6 LEAH PRANSKY (SBN 302246)  
7 lpransky@kvn.com  
8 633 Battery Street  
9 San Francisco, CA 94111-1809  
10 Telephone: 415 391 5400  
11 Facsimile: 415 397 7188

12 Attorneys for Defendants  
13 OCULUS VR LLC, and PALMER LUCKEY

14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA  
16 SOUTHERN DIVISION (SANTA ANA)

17 JULIANA GRIFFO,

18 Plaintiff,

19 v.

20 OCULUS VR, INC., and PALMER  
21 LUCKEY,

22 Defendants.

Case No. 8:15-cv-01228 DOC (JCGx)

**[PROPOSED] STIPULATED  
PROTECTIVE ORDER**

Complaint Filed: July 31, 2015

Trial Date: September 11, 2015

Judge: Hon. David O. Carter

1           1. A. PURPOSES AND LIMITATIONS

2           Discovery in this action is likely to involve production of confidential,  
3           proprietary or private information for which special protection from public  
4           disclosure and from use for any purpose other than prosecuting this litigation may  
5           be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
6           enter the following Stipulated Protective Order. The parties acknowledge that this  
7           Order does not confer blanket protections on all disclosures or responses to  
8           discovery and that the protection it affords from public disclosure and use extends  
9           only to the limited information or items that are entitled to confidential treatment  
10          under the applicable legal principles.

11          B. GOOD CAUSE STATEMENT

12          This action is likely to involve trade secrets, other valuable research,  
13          development, commercial, financial, technical and/or proprietary information for  
14          which special protection from public disclosure and from use for any purpose other  
15          than prosecution of this action is warranted. Such confidential and proprietary  
16          materials and information consist of, among other things, confidential business or  
17          financial information, information regarding confidential business practices, or  
18          other confidential research, development, or commercial information (including  
19          information implicating privacy rights of third parties), information otherwise  
20          generally unavailable to the public, or which may be privileged or otherwise  
21          protected from disclosure under state or federal statutes, court rules, case decisions,  
22          or common law (including, for example, the protective order entered by the court  
23          in *ZeniMax Media, Inc. and Id Software LLC v. Oculus VR LLC*, N.D. Tex. Case  
24          No. 3:14-cv-1849). Accordingly, to expedite the flow of information, to facilitate  
25          the prompt resolution of disputes over confidentiality of discovery materials, to  
26          adequately protect information the parties are entitled to keep confidential, to  
27          ensure that the parties are permitted reasonable necessary uses of such material in  
28          preparation for and in the conduct of trial, to address their handling at the end of

1 the litigation, and serve the ends of justice, a protective order for such information  
 2 is justified in this matter. It is the intent of the parties that information will not be  
 3 designated pursuant to this protective order for tactical reasons and that nothing be  
 4 so designated without a good faith belief that it has been maintained in a  
 5 confidential, non-public manner, and there is good cause why it should not be part  
 6 of the public record of this case.

7 C. ACKNOWLEDGEMENT OF PROCEDURE FOR FILING UNDER  
 8 SEAL

9 The parties further acknowledge, as set forth in Section 12.3, below, that this  
 10 Stipulated Protective Order does not entitle them to file confidential information  
 11 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed  
 12 and the standards that will be applied when a party seeks permission from the court  
 13 to file material under seal.

14 There is a strong presumption that the public has a right of access to judicial  
 15 proceedings and records in civil cases. In connection with non-dispositive motions,  
 16 good cause must be shown to support a filing under seal. *See Kamakana v. City*  
 17 *and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen.*  
 18 *Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony*  
 19 *Electrics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective  
 20 orders require good cause showing), and a specific showing of good cause or  
 21 compelling reasons with proper evidentiary support and legal justification, must be  
 22 made with respect to Protected Material that a party seeks to file under seal. The  
 23 parties' mere designation of Disclosure or Discovery Material as  
 24 CONFIDENTIAL does not—without the submission of competent evidence by  
 25 declaration, establishing that the material sought to be filed under seal qualifies as  
 26 confidential, privileged, or otherwise protectable—constitute good cause.

27 Further, if a party requests sealing related to a dispositive motion or trial,  
 28 then compelling reasons, not only good cause, for the sealing must be shown, and

the relief sought shall be narrowly tailored to serve the specific interest to be protected. *See Pintos v. Pacific Creditors Ass’n.*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item or type of information, document, or thing sought to be filed or introduced under seal in connection with a dispositive motion or trial, the party seeking protection must articulate compelling reasons, supported by specific facts and legal justification, for the requested sealing order. Again, competent evidence supporting the application to file documents under seal must be provided by declaration.

Any document that is not confidential, privileged, or otherwise protectable in its entirety will not be filed under seal if the confidential portions can be redacted. If documents can be redacted, then a redacted version for public viewing, omitting only the confidential, privileged, or otherwise protectable portions of the document, shall be filed. Any application that seeks to file documents under seal in their entirety should include an explanation of why redaction is not feasible.

## 2. DEFINITIONS

2.1 Action: *Griffo v Oculus VR, Inc. and Palmer Luckey*, Case No. 8:15-cv-01228 DOC (JCGx)

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES

1 ONLY.”

2 2.6 Disclosure or Discovery Material: all items or information, regardless of  
3 the medium or manner in which it is generated, stored, or maintained (including,  
4 among other things, testimony, transcripts, and tangible things), that are produced  
5 or generated in disclosures or responses to discovery in this matter.

6 2.7 Expert: a person with specialized knowledge or experience in a matter  
7 pertinent to the litigation who (1) has been retained by a Party or its counsel to  
8 serve as an expert witness or as a consultant in this action, (2) is not a past or  
9 current employee of a Party or of a Party’s competitor, and (3) at the time of  
10 retention, is not anticipated to become an employee of a Party or of a Party’s  
11 competitor.

12 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
13 Information or Items: extremely sensitive “Confidential Information or Items” that  
14 is highly proprietary or highly sensitive such that disclosure could harm the  
15 competitive interests of the Producing Party or a Non-Party that provided the  
16 information to the Producing Party on a confidential basis.

17 2.9 House Counsel: attorneys who are employees of a party to this Action  
18 working for the party in a legal capacity. House Counsel does not include Outside  
19 Counsel of Record or any other outside counsel.

20 2.10 Non-Party: any natural person, partnership, corporation, association or  
21 other legal entity not named as a Party to this action.

22 2.11 Outside Counsel of Record: attorneys who are not employees of a party  
23 to this Action but are retained to represent or advise a party to this Action and have  
24 appeared in this Action on behalf of that party or are employees or partners of a  
25 law firm that has appeared on behalf of that party.

26 2.12 Party: any party to this Action, including all of its officers, directors,  
27 employees, consultants, retained experts, and Outside Counsel of Record (and their  
28 support staffs).

1           2.13 Producing Party: a Party or Non-Party that produces Disclosure or  
2     Discovery Material in this Action.

3           2.14 Professional Vendors: persons or entities that provide litigation support  
4     services (e.g., photocopying, videotaping, translating, preparing exhibits or  
5     demonstrations, and organizing, storing, or retrieving data in any form or medium)  
6     and their employees and subcontractors.

7           2.15 Protected Material: any Disclosure or Discovery Material that is  
8     designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
9     ATTORNEYS’ EYES ONLY.”

10          2.16 Receiving Party: a Party that receives Disclosure or Discovery Material  
11     from a Producing Party.

12           3. SCOPE

13          This Order applies not only to Protected Material furnished by a Producing  
14     Party, but also to (1) copies, excerpts, abstracts, analyses, summaries, descriptions,  
15     or other forms of recorded information containing, reflecting, compiling, or  
16     disclosing Protected Material; and (2) any testimony, conversations, or  
17     presentations by Parties or their Counsel that might reveal Protected Material.

18          Any use of Protected Material at trial shall be governed by the orders of the  
19     trial judge. This Order does not govern the use of Protected Material at trial.

20           4. DURATION

21          Even after final disposition of this litigation, the confidentiality obligations  
22     imposed by this Order shall remain in effect until a Designating Party agrees  
23     otherwise in writing or a court order otherwise directs. Final disposition shall be  
24     deemed to be the later of (1) dismissal of all claims and defenses in this action,  
25     with or without prejudice; and (2) final judgment herein after the completion and  
26     exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
27     including the time limits for filing any motions or applications for extension of  
28     time pursuant to applicable law.

1           5. DESIGNATING PROTECTED MATERIAL

2           5.1 Exercise of Restraint and Care in Designating Material for Protection.

3       Each Party or Non-Party that designates information or items for protection under  
 4       this Order must take care to limit any such designation to specific material that  
 5       qualifies under the appropriate standards. The Designating Party must designate for  
 6       protection only those parts of material, documents, items or oral or written  
 7       communications that qualify so that other portions of the material, documents,  
 8       items or communications for which protection is not warranted are not swept  
 9       unjustifiably within the ambit of this Order.

10       Mass, indiscriminate or routinized designations are prohibited. Designations  
 11       that are shown to be clearly unjustified or that have been made for an improper  
 12       purpose (e.g., to unnecessarily encumber the case development process or to  
 13       impose unnecessary expenses and burdens on other parties) may expose the  
 14       Designating Party to sanctions.

15       If it comes to a Designating Party's attention that information or items that it  
 16       designated for protection do not qualify for protection, that Designating Party must  
 17       promptly notify all other Parties that it is withdrawing the inapplicable designation.

18       5.2 Manner and Timing of Designations. Except as otherwise provided in  
 19       this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
 20       stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
 21       under this Order must be clearly so designated before the material is disclosed or  
 22       produced.

23       Designation in conformity with this Order requires:

24       (a) for information in documentary form (e.g., paper or electronic  
 25       documents, but excluding transcripts of depositions or other pretrial or trial  
 26       proceedings), that the Producing Party affix at a minimum, the legend  
 27       "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
 28       ONLY" to each page that contains protected material. If only a portion of the



1 material on a page qualifies for protection, the Producing Party also must clearly  
2 identify the protected portion(s) (e.g., by making appropriate markings in the  
3 margins) and must specify, for each portion, the level of protection being asserted.

4 A Party or Non-Party that makes original documents available for inspection  
5 need not designate them for protection until after the inspecting Party has indicated  
6 which documents it would like copied and produced. During the inspection and  
7 before the designation, all of the material made available for inspection shall be  
8 deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the  
9 inspecting Party has identified the documents it wants copied and produced, the  
10 Producing Party must determine which documents, or portions thereof, qualify for  
11 protection under this Order. Then, before producing the specified documents, the  
12 Producing Party must affix "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –  
13 ATTORNEYS' EYES ONLY" to each page that contains Protected Material. If  
14 only a portion of the material on a page qualifies for protection, the Producing  
15 Party also must clearly identify the protected portion(s) (e.g., by making  
16 appropriate markings in the margins).

17 (b) for deposition testimony, including transcripts, such testimony shall be  
18 deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" until the  
19 expiration of fifteen (15) days after the deposition unless otherwise designated at  
20 the time of the deposition or during the fifteen (15) day period. Pages or entire  
21 transcripts of testimony given at a deposition or hearing may be designated as  
22 containing "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'  
23 EYES ONLY" information by an appropriate statement either at the time of the  
24 giving of such testimony or by written notification within fifteen (15) days after the  
25 deposition. If the testimony is not otherwise designated at the time of the  
26 deposition or during the fifteen (15) day period after the deposition, the testimony  
27 will be deemed to be "CONFIDENTIAL."

28 Transcripts containing Protected Material shall have an obvious legend on



1 the title page that the transcript contains Protected Material, and the title page shall  
2 be followed by a list of all pages (including line numbers as appropriate) that have  
3 been designated as Protected Material and the level of protection being asserted by  
4 the Designating Party. The Designating Party shall inform the court reporter of  
5 these requirements.

6 (c) for transcripts of pretrial and trial proceedings, Parties shall give the  
7 other parties notice if they reasonably expect a hearing or other proceeding to  
8 include Protected Material so that the other parties can ensure that only authorized  
9 individuals and individuals who have signed the “Acknowledgment and  
10 Agreement to Be Bound” (Exhibit A) are present at those proceedings. Procedures  
11 for requesting confidentiality designations of transcripts for pretrial and trial  
12 proceedings shall be in accordance with paragraph 5.2(b) and redaction requests  
13 shall be made in accordance with General Order No. 59 and any other applicable  
14 rules and procedures set forth by the Court. If a Designating Party seeks redaction  
15 of portions of a hearing or trial transcript disclosing its Protected Material, the  
16 Receiving Party agrees not to unreasonably withhold its consent to such a request.

17 (d) for information contained in written discovery responses, the responses  
18 may be designated as containing “CONFIDENTIAL” or “HIGHLY  
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information by means of a  
20 statement at the conclusion of each response that contains such information  
21 specifying the level of designation of the Protected Material and by placing a  
22 legend of the front page of such discovery responses stating: “CONTAINS  
23 CONFIDENTIAL INFORMATION/[the highest level of designation contained in  
24 the answers].”

25 (e) for information produced in some form other than documentary and for  
26 any other tangible items, that the Producing Party affix in a prominent place on the  
27 exterior of the container or containers in which the information or item is stored  
28 the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’

1 EYES ONLY.” If only a portion or portions of the information or item warrant  
2 protection, the Producing Party, to the extent practicable, shall identify the  
3 protected portion(s) and specify the level of protection being asserted.

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
5 failure to designate qualified information or items does not, standing alone, waive  
6 the Designating Party’s right to secure protection under this Order for such  
7 material. Upon timely correction of a designation, the Receiving Party must make  
8 reasonable efforts to assure that the material is treated in accordance with the  
9 provisions of this Order.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
12 designation of confidentiality at any time that is consistent with the Court’s  
13 Scheduling Order.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
15 resolution process under Local Rule 37-1 et seq. To avoid ambiguity as to whether  
16 a challenge has been made, the written notice must recite that the challenge to  
17 confidentiality is being made in accordance with this specific paragraph of this  
18 Order. In conferring, the Challenging Party must explain the basis for its belief that  
19 the confidentiality designation was not proper and must give the Designating Party  
20 an opportunity to review the designated material, to reconsider the circumstances,  
21 and, if no change in designation is offered, to explain the basis for the chosen  
22 designation. A Challenging Party may proceed to the next stage of the challenge  
23 process only if it has engaged in this meet and confer process first or establishes  
24 that the Designating Party is unwilling to participate in the meet and confer process  
25 in a timely manner.

26 6.3 Joint Stipulation. Any challenge submitted to the Court shall be via a  
27 joint stipulation pursuant to Local Rule 37-2.

28 6.4 The burden of persuasion in any such challenge proceeding shall be on

1 the Designating Party. Frivolous challenges, and those made for an improper  
 2 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
 3 parties) may expose the Challenging Party to sanctions. Until the Designating  
 4 Party has waived or withdrawn the confidentiality designation, all parties shall  
 5 continue to afford the material in question the level of protection to which it is  
 6 entitled under the Producing Party's designation until the Court rules on the  
 7 challenge.

## 8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
 10 disclosed or produced by another Party or by a Non-Party in connection with this  
 11 Action only for prosecuting, defending or attempting to settle this Action. Such  
 12 Protected Material may be disclosed only to the categories of persons and under  
 13 the conditions described in this Order. When the Action has been terminated, a  
 14 Receiving Party must comply with the provisions of section 15 below (FINAL  
 15 DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party at a  
 17 location and in a secure manner that ensures that access is limited to the persons  
 18 authorized under this Order.

19 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless  
 20 otherwise ordered by the court or permitted in writing by the Designating Party, a  
 21 Receiving Party may disclose any information or item designated  
 22 "CONFIDENTIAL" only to:

23 (a) the Receiving Party's Outside Counsel of Record in this Action, as well  
 24 as employees of said Outside Counsel of Record to whom it is reasonably  
 25 necessary to disclose the information for this Action;

26 (b) the officers, directors, and employees (including House Counsel) of the  
 27 Receiving Party to whom disclosure is reasonably necessary for this Action;

28 (c) Experts (as defined in this Order) of the Receiving Party to whom

1 disclosure is reasonably necessary for this Action and who have signed the  
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (d) the court and its personnel;

4 (e) court reporters and their staff;

5 (f) professional jury or trial consultants, mock jurors, and Professional  
6 Vendors to whom disclosure is reasonably necessary for this Action and who have  
7 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 (g) the author or recipient of a document containing the information or a  
9 custodian or other person who otherwise possessed or knew the information;

10 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
11 Action to whom disclosure is reasonably necessary provided: (1) the deposing  
12 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)  
13 they will not be permitted to keep any confidential information unless they sign the  
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise  
15 agreed by the Designating Party or ordered by the court. Pages of transcribed  
16 deposition testimony or exhibits to depositions that reveal Protected Material may  
17 be separately bound by the court reporter and may not be disclosed to anyone  
18 except as permitted under this Stipulated Protective Order; and

19 (i) any mediator or settlement officer, and their supporting personnel,  
20 mutually agreed upon by any of the parties engaged in settlement discussions.

21 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
22 ONLY” Information or Items. Unless otherwise ordered by the court or permitted  
23 in writing by the Designating Party, a Receiving Party may disclose any  
24 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
25 EYES ONLY” only to:

26 (a) the Receiving Party’s Outside Counsel of Record in this action, as well  
27 as employees of said Outside Counsel of Record to whom it is reasonably  
28 necessary to disclose the information for this litigation and who have signed the

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

2 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably  
3 necessary for this litigation, (2) who have signed the “Acknowledgment and  
4 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth  
5 in paragraph 7.4(a), below, have been followed;

6 (c) the court and its personnel;

7 (d) court reporters and their staff, professional jury or trial consultants, and  
8 Professional Vendors to whom disclosure is reasonably necessary for this  
9 litigation; and

10 (e) the author or recipient of a document containing the information or a  
11 custodian or other person who otherwise possessed or knew the information

12 (f) Any special master, referee, mediator or arbitrator appointed by the Court  
13 or selected by the parties to assist in resolution of this Action.

14 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to  
16 Experts.

17 (a) Unless otherwise ordered by the court or agreed to in writing by the  
18 Designating Party, a Party that seeks to disclose to an Expert (as defined in this  
19 Order) any information or item that has been designated “HIGHLY  
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(B)  
21 first must make a written request to the Designating Party that (1) identifies the  
22 general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
23 ONLY” information that the Receiving Party seeks permission to disclose to the  
24 Expert, (2) sets forth the full name of the Expert and the city and state of his or her  
25 primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies  
26 the Expert’s current employer(s), (5) identifies each person or entity from whom  
27 the Expert has received compensation or funding for work in his or her areas of  
28 expertise or to whom the Expert has provided professional services, including in

1 connection with a litigation, at any time during the preceding five years,<sup>1</sup> and  
2 (6) identifies (by name and number of the case, filing date, and location of court)  
3 any litigation in connection with which the Expert has offered expert testimony,  
4 including through a declaration, report, or testimony at a deposition or trial, during  
5 the preceding five years.

6 (b) A Party that makes a request and provides the information specified in  
7 the preceding respective paragraphs may disclose the subject Protected Material to  
8 the identified Expert unless, within fourteen (14) days of delivering the request, the  
9 Party receives a written objection from the Designating Party. Any such objection  
10 must set forth in detail the grounds on which it is based.

11 (c) A Party that receives a timely written objection must meet and confer  
12 with the Designating Party (through direct voice to voice dialogue) to try to resolve  
13 the matter by agreement within seven (7) days of the written objection. If no  
14 agreement is reached, the Party seeking to make the disclosure to the Expert may  
15 file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local  
16 Rule 79-5, if applicable) seeking permission from the court to do so. Any such  
17 motion must describe the circumstances with specificity, set forth in detail the  
18 reasons why disclosure to the Expert is reasonably necessary, assess the risk of  
19 harm that the disclosure would entail, and suggest any additional means that could  
20 be used to reduce that risk. In addition, any such motion must be accompanied by a  
21 competent declaration describing the parties' efforts to resolve the matter by  
22 agreement (*i.e.*, the extent and the content of the meet and confer discussions) and  
23 setting forth the reasons advanced by the Designating Party for its refusal to  
24 approve the disclosure.

25 In any such proceeding, the Party opposing disclosure to the Expert shall

26 <sup>1</sup> If the Expert believes any of this information is subject to a confidentiality  
27 obligation to a third-party, then the Expert should provide whatever information  
28 the Expert believes can be disclosed without violating any confidentiality  
agreements, and the Party seeking to disclose to the Expert shall be available to  
meet and confer with the Designating Party regarding any such engagement.

1 bear the burden of proving that the risk of harm that the disclosure would entail  
2 (under the safeguards proposed) outweighs the Receiving Party's need to disclose  
3 the Protected Material to its Expert.

4 8. COMMERCIALLY SENSITIVE SOURCE CODE

5 To the extent that inspection of commercially or otherwise sensitive source  
6 code becomes necessary in this case, the parties will meet and confer about a  
7 supplemental protective order applicable to such discovery.

8 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
9 PRODUCED IN OTHER LITIGATION

10 If a Party is served with a subpoena or a court order issued in other litigation  
11 that compels disclosure of any information or items designated in this Action as  
12 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
13 ONLY," that Party must:

14 (a) promptly notify in writing the Designating Party. Such notification  
15 shall include a copy of the subpoena or court order;

16 (b) promptly notify in writing the party who caused the subpoena or order to  
17 issue in the other litigation that some or all of the material covered by the subpoena  
18 or order is subject to this Protective Order. Such notification shall include a copy  
19 of this Stipulated Protective Order; and

20 (c) cooperate with respect to all reasonable procedures sought to be pursued  
21 by the Designating Party who's Protected Material may be affected.

22 If the Designating Party timely seeks a protective order, the Party served  
23 with the subpoena or court order shall not produce any information designated in  
24 this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –  
25 ATTORNEYS' EYES ONLY" before a determination by the court from which the  
26 subpoena or order issued, unless the Party has obtained the Designating Party's  
27 permission. The Designating Party shall bear the burden and expense of seeking  
28 protection in that court of its confidential material and nothing in these provisions



1 should be construed as authorizing or encouraging a Receiving Party in this Action  
2 to disobey a lawful directive from another court.

3 10.A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE  
4 PRODUCED IN THIS LITIGATION

5 (a) The terms of this Order are applicable to information produced by a Non-  
6 Party in this Action and designated as "CONFIDENTIAL" or "HIGHLY  
7 CONFIDENTIAL – ATTORNEYS' EYES ONLY." Such information produced  
8 by Non-Parties in connection with this litigation is protected by the remedies and  
9 relief provided by this Order. Nothing in these provisions should be construed as  
10 prohibiting a Non-Party from seeking additional protections.

11 (b) In the event that a Party is required, by a valid discovery request, to  
12 produce a Non-Party's confidential information in its possession, and the Party is  
13 subject to an agreement with the Non-Party not to produce the Non-Party's  
14 confidential information, then the Party shall:

15 (1) promptly notify in writing the Requesting Party and the Non-Party that  
16 some or all of the information requested is subject to a confidentiality agreement  
17 with a Non-Party;

18 (2) promptly provide the Non-Party with a copy of the Stipulated Protective  
19 Order in this Action, the relevant discovery request(s), and a reasonably specific  
20 description of the information requested; and

21 (3) make the information requested available for inspection by the Non-  
22 Party, if requested.

23 (4) request agreement from the Non-Party to produce the information  
24 requested;

25 (5) produce the requested information to the extent permitted by the  
26 confidentiality agreement or the agreement of the Non-Party..

27 (c) In the event that a Party is required, by a valid discovery request, to  
28 produce a Non-Party's confidential information in its possession, and that

1 information governed by a protective order entered by a court, then the Party shall:

2 (1) promptly notify in writing the Requesting Party that the information  
3 requested is governed by a protective order entered by a court;

4 (2) produce the information requested only to the extent permitted by the  
5 said protective order.

6 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

7 If a Receiving Party learns that, by inadvertence or otherwise, it has  
8 disclosed Protected Material to any person or in any circumstance not authorized  
9 under this Stipulated Protective Order, the Receiving Party must immediately (a)  
10 notify in writing the Designating Party of the unauthorized disclosures, (b) use its  
11 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform  
12 the person or persons to whom unauthorized disclosures were made of all the terms  
13 of this Order, and (d) request such person or persons to execute the  
14 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit  
15 A.

16 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
17 **PROTECTED MATERIAL**

18 When a Producing Party gives notice to Receiving Parties that certain  
19 inadvertently produced material is subject to a claim of privilege or other  
20 protection, the obligations of the Receiving Parties are those set forth in Federal  
21 Rule of Civil Procedure 26(b)(5)(B). Pursuant to Federal Rule of Evidence 502(d),  
22 the production of a privileged or work-product-protected document is not a waiver  
23 of privilege or protection from discovery in this case or in any other federal or state  
24 proceeding. For example, the mere production of privilege or work-product-  
25 protected documents in this case as part of a mass production is not itself a waiver  
26 in this case or any other federal or state proceeding. A Producing Party may assert  
27 privilege or protection over produced documents at any time by notifying the  
28 Receiving Party in writing of the assertion of privilege or protection. This

1 provision is not intended to modify whatever procedure may be established in an e-  
2 discovery order that provides for production without prior privilege review.

3 13. MISCELLANEOUS

4 13.1 Right to Further Relief. Nothing in this Order abridges the right of any  
5 person to seek its modification by the Court in the future.

6 13.2 Right to Assert Other Objections. By stipulating to the entry of this  
7 Protective Order, no Party waives any right it otherwise would have to object to  
8 disclosing or producing any information or item on any ground not addressed in  
9 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
10 any ground to use in evidence of any of the material covered by this Protective  
11 Order.

12 13.3 Producing Party's Material. The restrictions on the use of Protected  
13 Material established by this Order are applicable only to the use of information  
14 received by a party from another Party or from a Non-Party. A Party is free to use  
15 its own information as it pleases.

16 13.4 Filing Protected Material. Without written permission from the  
17 Designating Party or a court order secured after appropriate notice to all interested  
18 persons, a Party may not file in the public record in this action any Protected  
19 Material. A Party that seeks to file under seal any Protected Material must comply  
20 with Local Civil Rule 79-5. Protected Material may only be filed under seal  
21 pursuant to a court order authorizing the sealing of the specific Protected Material  
22 at issue. If a Party's request to file Protected Material under seal is denied by the  
23 court, then the Receiving Party may file the information in the public record unless  
24 otherwise instructed by the court.

25 13.5 ADVICE OF COUNSEL. NOTHING IN THIS ORDER SHALL  
26 PREVENT OR OTHERWISE RESTRICT OUTSIDE COUNSEL OF RECORD  
27 FROM RENDERING ADVICE TO THEIR CLIENTS AND, IN THE COURSE  
28 THEREOF, RELYING GENERALLY ON PROTECTED MATERIAL;

1 PROVIDED, HOWEVER, THAT IN RENDERING SUCH ADVICE COUNSEL  
2 SHALL NOT DISCLOSE, REVEAL OR DESCRIBE ANY SUCH MATERIALS  
3 EXCEPT INsofar AS ALLOWED (IF ALLOWED AT ALL) UNDER THE  
4 TERMS OF THIS ORDER.

5 13.6 Export Control. The Protected Material disclosed by the Producing  
6 Party may contain technical data subject to export control laws and therefore the  
7 release of such technical data to foreign persons or nationals in the United States or  
8 elsewhere may be restricted. The Receiving Party shall take measures necessary to  
9 ensure compliance with applicable export control laws, including confirming that  
10 no unauthorized foreign person has access to such technical data.

11 No Protected Material may leave the territorial boundaries of the United  
12 States of America. Without limitation, this prohibition extends to Protected  
13 Information (including copies) in physical and electronic form. The viewing of  
14 Protected Information through electronic means outside the territorial limits of the  
15 United States of America is similarly prohibited. The restrictions contained within  
16 this paragraph may be amended through the express written consent of the  
17 Producing Party to the extent that such agreed to procedures conform with  
18 applicable export control laws and regulations. Nothing in this paragraph is  
19 intended to remove any obligation that may otherwise exist to produce documents  
20 currently located in a foreign country.

21 14. FINAL DISPOSITION

22 After the final disposition of this Action, as defined in paragraph 4, within  
23 60 days of a written request by the Designating Party, each Receiving Party must  
24 return all Protected Material to the Producing Party or destroy such material. As  
25 used in this subdivision, "all Protected Material" includes all copies, abstracts,  
26 compilations, summaries, and any other format reproducing or capturing any of the  
27 Protected Material. Whether the Protected Material is returned or destroyed, the  
28 Receiving Party must submit a written certification to the Producing Party (and, if

1 not the same person or entity, to the Designating Party) by the 60 day deadline that  
2 (1) identifies (by category, where appropriate) all the Protected Material that was  
3 returned or destroyed and (2) affirms that the Receiving Party has not retained any  
4 copies, abstracts, compilations, summaries or any other format reproducing or  
5 capturing any of the Protected Material. Notwithstanding this provision, Counsel  
6 are entitled to retain an archival copy of all pleadings, motion papers, trial,  
7 deposition, and hearing transcripts, legal memoranda, correspondence, deposition  
8 and trial exhibits, expert reports, attorney work product, and consultant and expert  
9 work product, even if such materials contain Protected Material. Any such archival  
10 copies that contain or constitute Protected Material remain subject to this  
11 Protective Order as set forth in Section 4 (DURATION).

12 **15. VIOLATION**

13 Any violation of this Order may be punished by appropriate measures  
14 including, without limitation, contempt proceedings and/or monetary sanctions.  
15

16 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

17 Dated: August 21, 2017

18 **KEKER, VAN NEST & PETERS  
LLP**

19  
20 By: /s/ Michael S. Kwun

21 **DAVID SILBERT  
MICHAEL S. KWUN  
LEAH PRANSKY**

22 **Attorneys for Defendants OCULUS  
23 VR, INC., and PALMER LUCKEY**  
24  
25  
26  
27  
28

1 Dated: August 21, 2017

ERVIN COHEN & JESSUP LLP

2  
3 By: /s/ Russell M. Selmont  
4 Randall S. Leff  
5 Russell M. Selmont  
6 Attorneys for Defendants  
7 OCULUS VR LLC, and PALMER  
8 LUCKEY  
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**ATTESTATION**

Pursuant to Civil Local Rule 5-4.3.4, I attest that all other signatories listed, and on whose behalf this filing is submitted, concur in the filing's content and have authorized the filing.

Dated: August 21, 2017

/s/ Leah Pransky  
LEAH PRANSKY



## EXHIBIT A

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under penalty of  
 perjury that I have read in its entirety and understand the Stipulated Protective  
 Order that was issued by the United States District Court for the Central District of  
 California on [date] in the case of \_\_\_\_\_ [insert formal name of the case  
 and the number and initials assigned to it by the court]. I agree to comply with and  
 to be bound by all the terms of this Stipulated Protective Order and I understand  
 and acknowledge that failure to so comply could expose me to sanctions and  
 punishment in the nature of contempt. I solemnly promise that I will not disclose in  
 any manner any information or item that is subject to this Stipulated Protective  
 Order to any person or entity except in strict compliance with the provisions of this  
 Order. I further agree to submit to the jurisdiction of the United States District  
 Court for the Central District of California for enforcing the terms of this  
 Stipulated Protective Order, even if such enforcement proceedings occur after  
 termination of this action. I hereby appoint \_\_\_\_\_ [print  
 or type full name] of \_\_\_\_\_ [print or  
 type full address and telephone number] as my California agent for service of  
 process in connection with this action or any proceedings related to enforcement of  
 this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_